

State of New Hampshire Banking Department

In re the Matter of:)Case No.: 08-291
)
State of New Hampshire Banking)Notice of Hearing - Amended Order to
)Show Cause with Immediate Suspension
Department,)
)and
Petitioner,)
)Cease and Desist Order
and)
)
American Heritage Mortgage Corp, and)
)
Thomas A. Lantry,)
)
Respondents)
)

NOTICE OF HEARING

Pursuant to RSA 397-A:17, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue an order to show cause why license revocation penalties for violations of New Hampshire Banking laws should not be imposed. The Commissioner has the further authority to impose an immediate suspension. Upon a finding of irreparable harm if revocation of the license is delayed, the Commissioner may summarily suspend any license pending final determination of the Order to Show Cause.

Pursuant to RSA 397-A:21, the Commissioner has the authority to suspend, revoke or deny any license and to impose administrative penalties of up to \$2,500.00 for each violation of New Hampshire banking laws and rules.

The Department issued to the above named Respondents an Amended Order to Show Cause with an Immediate Suspension and Cease and Desist Order of the

1 license on February 23, 2009. RSA 541-A requires the Department to hold a
2 hearing on such summary action within ten (10) working days.

3 The Department alleges the following:

4 Issue 1: Violation of the Gramm-Leach Bliley Act, Title V, and Standards
5 for Safeguarding Customer Information, 16 C.F.R. Section 314.4(a) (RSA 397-
6 A:2, III);

7 Issue 2: Violation of the Gramm-Leach Bliley Act, Title V, and Standards
8 for Safeguarding Customer Information, 16 C.F.R. Section 314.4(b) (RSA 397-
9 A:2, III);

10 Issue 3: Violation of the Gramm-Leach Bliley Act, Title V, and Standards
11 for Safeguarding Customer Information, 16 C.F.R. Section 314.4(c) (RSA 397-
12 A:2, III);

13 Issue 4: Violation of the Gramm-Leach Bliley Act, Title V, and Standards
14 for Safeguarding Customer Information, 16 C.F.R. Section 314.4(d) (RSA 397-
15 A:2, III);

16 Issue 5: Violation of the Gramm-Leach Bliley Act, Title V, and Standards
17 for Safeguarding Customer Information, 16 C.F.R. Section 314.4(e) (RSA 397-
18 A:2, III);

19 Issue 6: Violation of the Real Estate Settlement Procedures Act,
20 Regulation X, 24 C.F.R. Section 3500.7(a) (RSA 397-A:2, III);

21 Issue 7: Violation of the Real Estate Settlement Procedures Act,
22 Regulation X, 24 C.F.R. Section 3500.7(c)(2) (RSA 397-A:2, III);

23 Issue 8: Failure to Supervise (RSA 397-A:6,I);

24 Issue 9: Failure to Update Information on File with Commissioner (RSA
25 397-A:10, IV);

1 Issue 10: Failure to Maintain Records for Three Years (RSA 397-A:11,I);
2 Issue 11: Failure to Properly Record Keep (RSA 397-A:11,I);
3 Issue 12: Failure to Provide Written Disclosures to Consumers within 3
4 Days of Receipt of Loan Application (RSA 397-A:16,I);
5 Issue 13: Fraudulent Misrepresentations or Concealment of Material
6 Particulars to the Consumer (RSA 397-A:17,I(f));
7 Issue 14: Failure to Supervise (RSA 397-A:17,I(g));
8 Issue 15: Dishonest or Unethical Practices (RSA 397-A:17,I(k));

9 Accordingly, an adjudicative proceeding shall be commenced pursuant to
10 RSA 541-A:31 ("Availability of Adjudicative Proceeding; Contested Cases;
11 Notice, Hearing and Record") and Chapter 800 of the Department of Justice's
12 rules (NH Code of Administrative Rules JUS 800) for the purpose of
13 permitting the Respondents to show compliance with RSA 397-A and the rules
14 adopted thereunder.

15 Each party has the right to have an attorney present to represent the
16 party at the party's expense, or may represent itself.

17 THEREFORE, IT IS ORDERED, that the Respondents appear before the New
18 Hampshire Banking Department on **Wednesday March 4, 2009 at 10:00 am**, at the
19 Department's offices at 53 Regional Drive, Suite 200, Concord, New Hampshire
20 03301, for the purpose of participating in an adjudicative proceeding, at
21 which time the Respondents will have the opportunity to demonstrate why the
22 relief sought in the show cause order with immediate suspension should not
23 become permanent; and

24 IT IS FURTHER ORDERED, that if the Respondents elect to be represented
25 by Counsel, said Counsel shall file notice of appearance at the earliest

possible date; and

IT IS FURTHER ORDERED, that Maryam Torben Desfosses, Hearings Examiner, New Hampshire Banking Department is designated as Hearings Examiner in this matter with authority to represent the public interest within the scope of the Department's authority. The Hearings Examiner shall have the status of a party to this proceeding; and

IT IS FURTHER ORDERED, Presiding Officer Ingrid White shall issue a RECOMMENDED DECISION in this matter which shall be reviewed and approved, disapproved or modified by the Banking Commissioner; and

IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked, for identification only, and filed with the Department and provided to the opposing party **on or before Thursday, February 26, 2009**. Hearings Examiner shall pre-mark the Department's exhibits with Arabic numbers. The Respondents shall pre-mark exhibits with capital letters. An index/list of exhibits providing a brief description of each exhibit with its corresponding pre-marked number or letter shall be filed by both parties simultaneous with the filing of exhibits; and

IT IS FURTHER ORDERED, that the parties shall exchange a list of all exhibits and witnesses to be called at the hearing with a brief summary at the hearing, and shall at the same time file a copy of their respective lists with the Presiding Officer; and

IT IS FURTHER ORDERED, that all periods referenced in this notice shall be calendar days. If the last day of the period so computed falls on a Saturday, Sunday, or legal holiday, then the time period shall be extended to include the first business day that is not a Saturday, Sunday, or legal

1 holiday; and

2 IT IS FURTHER ORDERED, that the Department shall have the burden of
3 setting forth a *prima facie* case, then the Respondents shall have the burden
4 of showing compliance with applicable law by a preponderance of the evidence;

5 IT IS FURTHER ORDERED, that Respondents' failure to appear at the time,
6 date, and place specified may result in the hearing being held *in absentia*
7 and/or default ruling in favor of the Department, without further notice or
8 opportunity to be heard; and

9 IT IS FURTHER ORDERED, that a record of the proceeding shall be made
10 by a certified shorthand court reporter provided by the Department.

11 IT IS FURTHER ORDERED, that all documents shall be filed with the
12 Presiding Officer in the form of an original and one (1) copy and shall bear
13 a certification that a copy is being delivered to Hearings Examiner and any
14 other parties to this matter in accordance with RSA 541-A (Administrative
15 Procedure Act) and Chapter 800 of the Department of Justice's rules (NH Code
16 of Administrative Rules JUS 800). All documents shall be filed by mailing or
17 delivering them to the New Hampshire Banking Department, ATTN: Ingrid White,
18 Presiding Officer, Docket 08-291, 53 Regional Drive, Suite 200, Concord, NH
19 03301. Filing by facsimile or electronic transmission shall not be accepted;
20 and

21 IT IS FURTHER ORDERED, that the parties may submit Proposed Orders,
22 which shall include findings of fact and conclusions of law, separately
23 stated, no later than ten (10) days following conclusion of the hearing(s) in
24 this matter; and

25 IT IS FURTHER ORDERED, that routine procedural inquiries may be made

1 by telephoning Maryam Torben Desfosses at (603)271-3561, but all other
2 communications with the Presiding Officer and with the Department shall be
3 in writing and shall be filed as provided above. *Ex parte* communications
4 are forbidden by statute; and

5 IT IS FURTHER ORDERED, that a copy of this Notice of Hearing shall be
6 mailed to all named Respondents at their addresses of record and that a copy
7 shall also be delivered to Maryam Torben Desfosses, Hearings Examiner, and
8 to the Presiding Officer at the New Hampshire Banking Department.

9
10 **SO ORDERED,**

11
12
13 /s/
Peter C. Hildreth
Commissioner
State of New Hampshire
Banking Department

02/23/09
Date